[Mr. N. Ramakrishna Pillai.]

THE CIVIL PROCEDURE CODE AMENDMENT BILL.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to present the report of the Select Committee on the Civil Procedure Code Amendment Bill and move that it be taken up for consideration.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Sir, I beg to second the motion, and in doing so I beg to say a few words, if I am in order.

DEPUTY PRESIDENT: The motion is to take the Select Committee's Report into consideration.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I do not propose to speak about any of the sections or any of the changes effected by the Select Committee. All that I wish to say is that the Bill that is now presented after the Select Committee stage is one of the youngest children of a very high order of legislative capacity. Mr. Subba Aiyar has been the Law Member of this Council for 12 years and I may observe, Sir, that it seldom falls to the lot of any Law Member to pilot so many Bills during the course of such a period. I remember that even those great legislators in the Imperial Legislative Council, Sir Henry Maine, Whitley Stokes, Fitz James Stephen and Macaulay were not able to do so much legislative work in such a variety of subjects as my learned friend Mr. Subba Aiyar. In the Select Committee stage, when we have had abundant opportunity of threshing out details of this measure, Mr. Subba Aiyar's services have been of very valuable use. I think, Sir, that the report of the Select Committee, which is the result of very anxious deliberation on the part of several members who had been appointed on the Committee, is satisfactory, and the number of amendments is also very small. I therefore second the motion and hope that the Select Committee's report will be adopted.

The motion was carried.

Clauses 1 to 7.

DEPUTY PRESIDENT: There are no amendments to Clauses 1 to 7, and I take it that the House agrees to those Clauses standing as part of the Bill. The question is that Clauses 1 to 7 form part of the Bill.

The motion was carried and Clauses 1 to 7 were added to the Bill.

Clauses 8 to 30.

DEPUTY PRESIDENT: There are two amendments in clause 8, one by Mr. N. Ramakrishna Pillai and one by Mr. G. Parameswaran Pillai. Mr. Ramakrishna Pillai may move his amendment.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): I beg to move that Clause 8 be deleted. My reasons are that no such restriction as is made in the Clause should be maintained with regard to Civil Suits in respect of Service Inam lands and Kandukrishi lands. So

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far as Viruthi and Service Inam lands are concerned, there are not very many lands of that variety now, and suits practically relating to Kandukrishi lands are sought to be exempted under this system. Sir, it is very hard upon tenants holding Kandukrishi lands to be told that they should get the permission of Government for every suit they have to institute. No doubt, the explanation makes some provision in respect of mortgage, trespass, etc. I do not think that that provision would be sufficient. There is practically no use in placing restrictions upon the right to go to Civil Courts in respect of these lands. Hence my amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I second the amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I oppose the amendment. My friend had nothing to say with reference to pensions, Viruthi and Service Inam lands. He has not given any reason why the Clause should be deleted so far as these lands are concerned. That being so, the deletion ought to be restricted to Kandukrishi lands and not to all the others. Elsewhere, pensions are regulated by Pensions Act and the question of pension is entirely a matter between Government and the pensioner, and therefore it is that Government sanction is insisted upon in suits relating to pensions. So far as Service Inam lands are concerned, I daresay that it will be readily conceded that sanction is necessary. The only question is about Kandukrishi lands. I daresay that the House knows that these lands are supposed to be the home-farm lands of the Sovereign, and so, they are at his entire disposal. When the Select Committee were at the Section, certain inconveniences and difficulties were brought pointedly to their notice. Therefore, to remedy those inconveniences and in accordance with the rules that have been promulgated by Government themselves, the Select Committee thought it necessary to give exemption in certain cases, namely, in cases where the suit is for the recovery of the lands from mortgagee or lessee or for evicting a trespasser therefrom. In those cases, anybody is at liberty to sue without sanction. Even in the case of suits for the recovery of service lands from a mortgagee or lessee or for the eviction of a trespasser, this may be done, so that in respect of Service Inam lands in which the interests of Government will not be affected, suits are allowed to be filed without sanction. I think these are the ordinary cases in which the holders of Kandukrishi lands will be affected and for which Government sanction has hitherto been required. I think the exemption proposed by the Select Committee is quite ample; and I do not think it desirable to extend it further, for this reason also, that, if you extend it to Kandukrishi lands, it is open to defendant to say that the Sirkar is interested in the property and that it should be impleaded as a party and that the suit should be filed in the District Court and thus have it protracted. The provision, as it is, is to my mind also a safeguard, because so far as the ordinary Kandukrishi tenant is concerned, recovery from a mortgagee or a lessee or evicting a trespasser, these are ordinary cases in which the holder of Kandukrishi lands will have to file a suit.

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[Mr. V. Subba Aiyar.]

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : What about partition suits?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Government are not bound to recognise the partition unless it is declared by a Proclamation that these holders have got a permanent right of occupancy alienable, heritable and all that; consistent with that principle, it should not be allowed that a proprietor or a land-holder should be compelled to recognise the various sub-divisions of his estate. That being the case, in the case of partition, if Government should recognise the divisions of holdings, I say Government sanction would be required. Ordinary cases are met by the provision that has already been made.

MR. JOSEPH PANJIKARAN (*Shertallai*) : So long as the Government do not think of evicting the tenants, what is the principle involved in restricting the right of the public in the matter of civil suits in regard to Kandukrishi lands?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Because, till now, there is no permanent right of occupancy. The relation is only that of an ordinary landlord and tenant. An ordinary landlord is not bound to recognise sub-divisions made by his tenants without his consent, if the tenant has not got heritable and alienable right as in the case of ryotwari holdings. So long as the lands are Government lands—Government may not evict—just as in the case of Jenmies and Edavakais, but the right to evict is there. When there is no permanent heritable or alienable right, I do not think it desirable.

MR. JOSEPH PANJIKARAN (*Shertallai*) : Does he think that the right of eviction will in any way be impaired?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Yes, every partition will have to be recognised and also sub-division. The apportionment of assessment will have to be made and other things contingent thereon. So long as the tenant has no permanent right of occupancy, the Government are not bound to recognise partition. That is why Government sanction is necessary. The point is that, if once a party gets Government sanction, he has got the assurance that Government will act according to the decision of the court. If without sanction the man gets a partition decree by going to a District Court or High Court and ultimately Government refuse to recognise the partition, it will be absolutely of no use. Therefore, in order not to launch upon speculative transaction and ultimately to be told that Government would not recognise it, sanction should be obtained. If sanction is obtained, there will be a guarantee that Government will abide by the decision of the court, and it is a safeguard. To my mind, the sanction is absolutely desirable and it is not prejudicial to the tenants and the extent to which we have gone is sufficient to satisfy all ordinary requirements. I should say that the amendment made by the Select Committee is in the interests of the tenant and will also safeguard the interests of the Government.

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MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*) : Is there not a general complaint that there is delay in getting Government sanction ?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : That is why the provision has been amended in the case of mortgage, etc. There was a complaint that the delay in the granting of sanction acted prejudicially. Of course, partitions will be rare. What I say is that, if you launch upon a civil suit which is costly and ultimately you are told that the Government would not recognise the partition, it is certainly more prejudicial. I hope the House is satisfied with the explanations I have offered. Let us see how the present measure works and if there is difficulty, I daresay it can be amended. I think the safeguards now provided are sufficient for all ordinary purposes.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*) : I withdraw the amendment.

The amendment was by leave withdrawn.

The following amendment which was not moved was deemed o have been withdrawn.

MR. G. PARAMESWARAN PILLAI (*Neyyattinkara*) :

Add the following as proviso to Clause 8 : "Provided that nothing contained in this Section shall relate to suits which do not involve the determination of or affect the rights or interests of Our Government."

DEPUTY PRESIDENT : There are no amendments to Clauses 9 to 30. The question is that Clauses 8 to 30 form part of the Bill.

The motion was carried and the Clauses were added to the Bill.

Clauses 31 to 58.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*) : I have got two amendments. My first amendment is to delete sub-clause (1) of Clause 31, which runs as follows :—

"In suits for money, no court shall, in respect of the period antecedent to the institution of the suit, allow in its decree a higher rate of interest than *twelve per cent.* per annum and the amount adjudged as interest for such period shall not exceed one half of the principal sued for ".

My reason is that Regulations I of 1010 and IV of 1010 make provision for the rate of interest before the decree. In the existing Civil Procedure Code also there is no such provision. In the British Indian C. P. C. also there is no such provision. The award of interest for the period before the institution of the suit is governed by the law and there is a law as I submitted, and there is no necessity for introducing sub-clause (1). I therefore propose that it may be deleted. May I move the other amendment ?

DEPUTY PRESIDENT : For the present you had better confine yourself to the first amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Sir, I do not know what my friend really means by requesting this House to

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delete sub-clause (1), because, in the law as to interest, certain amendments have to be made in the light of representations made in the Assembly and elsewhere on account of the Full Bench ruling that, if a person prayed for interest amounting to one half of the principal before the date of the suit, he could not have a decree for interest between the date of suit and the date of decree. To avoid this anomaly, sub-clauses (2) and (3) had to be put in and when you enact sub-clauses (2) and (3), it was thought desirable that the whole law of interest should be there. It is word for word the existing law on the subject. In order that Judges and Munsiffs may know what interest they may award in particular cases which, so far as money is concerned was practically repealed in other respects, it was thought that we should state what the law was and then say what the several amendments are. I do not know whether my friends would seriously object to it. There is absolutely no modification in law. I do not know why the sub-clause should be deleted.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Is there any necessity for the provision there?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Because we are enacting sub-clauses (2) and (3); therefore sub-clause (1) is put in.

DEPUTY PRESIDENT: Do you press your amendment, Mr. Ramakrishna Pillai?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I withdraw the amendment.

The amendment was by leave withdrawn.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): In regard to my next amendment, there is a mistake. As it is, the words "Subject to the provisions of Regulations I of 1010 and IV of 1010" will have to be inserted after the word "may" in line 2. I want the expression to be put in, in the place of "Notwithstanding anything contained in Regulation I of 1010".

DEPUTY PRESIDENT: Who seconds it?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I have not spoken on my amendment.

DEPUTY PRESIDENT: I thought you had finished your speech.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): If you allow me, I will speak.

DEPUTY PRESIDENT: I do not want to deprive you of your right of speaking. I thought you had finished and therefore I asked who seconds you.

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MR. P. K. NARAYANA PILLAI (*Vaikam* cum *Ettumanur*): We were under the impression that he had not finished his speech.

DEPUTY PRESIDENT: You tell me you were under the impression that he had not finished his speech. I have no objection to allow him to continue.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): There is a mistake in my amendment.

DEPUTY PRESIDENT: You want to correct it; that is to say, withdraw the amendment as it is and move a fresh amendment with the necessary corrections. I will allow you to move a fresh amendment.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I submit, there is a mistake in printing also.

I move that, in Clause 31, sub-clause (2), line 2, the words "*Subject to the provisions of Regulations I of 1010 and IV of 1010*" be inserted between the words "*may*" and "*in*," and that the words "*notwithstanding anything contained in Regulation I of 1010*" in line 1 of the sub-clause be deleted.

I submit that no departure should be made from the provisions contained in Regulations I of 1010 and IV of 1010. The provisions now made should be subject to those contained in Regulations I and IV of 1010. My proposal is that, instead of "*notwithstanding anything contained in Regulation I of 1010*" the words "*subject to the provisions of Regulations I and IV of 1010*" should be put in. As amended by me the section reads thus:

"(*a*) The Court may, *subject to the provisions of Regulations I of 1010 and IV of 1010*, in addition to the interests awarded under sub-section (1), decree payment of interest on the principal sum adjudged of such amount as may accrue at a rate not exceeding 12 per cent. from the date of suit to the date of decree".

DEPUTY PRESIDENT: What is the change effected by your amendment? I only want to understand your position, Mr. Ramakrishna Pillai.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumannur*): The interest should not exceed 12 per cent.

DEPUTY PRESIDENT: Even without any amendment it is so.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumannur*): The maximum amount should not exceed 12 per cent, or half the principal amount till the date of the decree. More than half the principal should not be adjudged till the date of decree. That is why I propose to insert the words "*subject to the provisions of Regulations I of 1010 and IV of 1010*" between the words "*may*" and "*in*" in line 2, sub-clause (2), Clause 31.

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[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I oppose the amendment. There has been some misapprehension on the part of my friend Mr. Ramakrishna Pillai, and, I must candidly admit, it was rather difficult for me to follow him. I may point out that, at the time the Bill was introduced, there was great opposition to this Clause, and, out of deference to the wishes of the House, the Select Committee made it as harmless as possible. The first sub-section says that, before the date of suit, half of the principal may be decreed as interest. I daresay it is within the knowledge of the House, especially the lawyer members, that recently there was a Full Bench ruling which said that till the date of decree we can recover only half of the principal by way of interest. In other words, even if the interest had accumulated to half the principal or more on the date of suit, if only the suit had been dragging on—as in the recent case which was pending for six years—the plaintiff should not get any interest for the period of suit however long it may be, although there is no fault on the part of the plaintiff. At any rate, I do not see any reason why the plaintiff should suffer for the delay in the disposal of suits, especially when he is not in the least responsible for the delay. There was much complaint in the Assembly about this particular question. With a view to avoid such complaints, it was decided by the Select Committee that the plaintiff should get interest, not exceeding 12 per cent. from the date of suit till the date of decree. No doubt, we are willing to abide by the old Regulation as regards the interest till the date of suit. I submit, it was in accordance with public opinion and in deference to the representations in the Assembly that it was thus laid down by the Select Committee. Otherwise, the defendant will postpone the evil day for him as much as possible. He will delay the decree as much as possible. It is really very hard that, for no fault of his, the creditor should not get any interest for his money from the date of suit till it is finally decreed by the High Court. I daresay, at any rate Mr. Changanachery Paramesvaran Pillai knows, I believe, that that was not the sort of impression that the court had at the time they gave the ruling.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*). If you say "*notwithstanding anything contained in Regulation I of 1010 the court may—*" then there will be no limit or maximum. According to the provision as settled by the Select Committee, the creditor will be entitled to interest at 12 per cent. on the decree whatever be the maximum amount decreed.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not see why the plaintiff should be mulcted for the delay caused by the frivolous contentions of the defendant. The plaintiff demands only the money that he had advanced; he has come to the court in time. Unnecessary and frivolous contentions were raised by the defendant and the disposal of the suit was delayed. Why should the creditor

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forego his dues for no fault of his? Much capital was made in the Assembly of the delay in the disposal of suits, of the protracted nature of suits, of the trouble given to the creditors by debtors, of the small rate of interest allowed by the court, and of all the inconveniences and hardships of the creditors. The creditors, as all of us are aware, are not able to get money from the Bank even at 6 per cent. It is the existing law on the subject that is mainly responsible for the delay in suits and the delay in execution proceedings. The defendants are tempted to drag on, since they will thereby get time during which they will not be forced to pay interest. All these facts were pointed out in the representations in the Sri Mulam Popular Assembly. Regulations I of 1010 and IV of 1010 were interpreted by the High Court to mean that they did not empower the courts to award any interest for the period between the date of suit and the date of decree. It is this that is mainly responsible for the delay experienced in the Execution Courts and the delay in the disposal of suits. The provision as settled by the Select Committee will deter the defendant from raising unnecessary and frivolous contentions and from delaying the disposal of suits, because delay will mean a pinch in his purse. Therefore, once we take away this provision from the Bill as settled by the Select Committee, we take away the most essential requisite for prompt realisation of decree debts and prompt disposal of suits. I therefore oppose the amendment.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I still adhere to the proposal I have made. If the expression "*notwithstanding anything contained in Regulation I of 1010*" is allowed to stand, the position would be that, instead of the decree-holder getting half the principal as interest till the date of decree, he will be entitled to get whatever amount he would be entitled to irrespective of this limitation till the date of decree. He gets half the principal till the date of suit and another half till the date of decree and interest for the period after decree also. My submission is that no departure should be made from the provisions contained in Regulations I of 1010 and IV of 1010. The creditor, as at present, is entitled to get interest only at the rate of 12 per cent. but not exceeding, however, half the principal till the date of decree. There is no reason why he should get more. In the generality of cases, it is not likely that money suits take a long time for decision.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Many of the suits in the several courts pending for 8 years and more are money suits.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I ask Mr. Ramakrishna Pillai whether very often the delay is not due to the inconvenience of the courts?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Very often the delay is due to that. Ordinarily it is not likely that these suits will go on for a long time. Of course, there are cases which are pending for 7 or 8 years. But, such cases are not cases relating purely

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[Mr. P. K. Narayana Pillai.]

to money transactions. I submit there is no necessity for changing the existing law on the matter. I therefore press the amendment.

The amendment was put to vote and lost.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): I move that, in sub-clause (2) (*a*), line 4, "nine per cent." be substituted for "twelve per cent."

My reason for bringing forward this amendment is that, as it is, we have got three rates of interest provided for in the Bill, one rate up to the date of suit, another from the date of suit to the date of decree and a third after the date of decree. My submission is that it is not safe for all the parties concerned to make these three distinctions. So, I prefer to have nine per cent. all through.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I oppose it for this reason. Under the existing law, 6 per cent. is awarded only after the decree. Before the date of suit only half the capital is awarded by way of interest. For the period between the date of suit and the date of decree (now that Mr. Ramakrishna Pillai's amendment has been thrown out), under the existing law, the court is competent to award a decree for 12 per cent.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): They never do it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Who said that? They do. As for the period after the decree, they are very particular to award the decree, and for the period from the date of suit to the date of decree, sometimes they give a higher rate.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): As it is, there is no distinction in the rate of interest between the period from the date of suit to the date of decree and the period after the date of decree.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The rate of interest after date of decree is 6 per cent.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): I press the amendment to a division.

The amendment was put to vote and lost.

The question that Clauses 31 to 58, with the exception of Clause 46 deleted by the Select Committee do form part of the Bill was put to vote and carried.

The Clauses were added to the Bill.

Clause 59.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): My proposal is that the first paragraph of Section 314 of the existing Civil

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Procedure Code put in the place of Clause 59, sub-clause (1), would be quite sufficient. The first paragraph of Section 314 runs thus:

"No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such person claims."

This section which has now been brought into line with Section 66 of the existing Civil Procedure Code in British India has been interpreted to mean that no suit shall lie not only against the purchaser at court auction but also against any person who derives title from such auction purchaser. That is the recent interpretation put upon that section by courts of law. It is provided now that the prohibition may be extended to the case of those who claim through these auction purchasers. I maintain that the present provision in Section 314 of our Civil Procedure Code may be retained as it is.

The grounds upon which I claim that the existing Section 314 may be retained are as follows. Unfortunately or fortunately, we have got a system of benami purchase in the land. I can understand the force of Section 314 which says that once a person purchases a property in court auction, since he stands in direct relation to the court, what the court proceeds to do should not be stultified by other considerations arranged between the parties behind the scene. That is sensible enough. But, if from a court auction purchaser, another person purchases the property, the court has nothing to do with it. It is only proper to leave it to the two parties to negotiate all matters of purchase or sale between themselves. That a protection should be thrown round such a man also, while as a matter of fact he might have taken the property from the auction purchaser on certain confidential terms, that the legislature should be anxious to rock the property as it descends from the court auction purchaser also, is a thing which does not appear to me to be very necessary. As a matter of fact, it will be seen that the courts bewail Section 314 of the Civil Procedure Code itself, because it has kept back the courts from doing justice between parties, even when the devious courses of the litigious world are laid bare before courts. Such being the case, I fail to see the justification of extending this prohibition in a code which concerns mainly with the law of procedure and not with substantive law. That is the aspect of the question that I am presenting to the House for consideration and acceptance.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I oppose the amendment. I rather fail to see the ingenuity of my friend. What the law says is, if a man purchases at a court auction and acquires a title, no suit shall lie against the certified purchaser on the ground that he was a benami purchaser. Between the person who is really interested and the benamidar, there may be ever so many relations which the benamidar will be able to establish. What my friend wants is to totally ignore all the elementary principles of law, namely, that a *bona fide* purchaser for value without notice is always protected. To say that, if a person purchases from the court auction

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purchaser, a suit may be filed against that person on the ground that it is a benami purchase is against all elementary principle of legislation.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether it is a question of fact to be examined by a court of law?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The suit is between the person who says that he is the real owner and the person who claims under the benami purchaser. The fact is not that no suit shall lie against him under any circumstances whatsoever, but that between the real owner and the benami purchaser no suit shall lie. That is to say, if the benamidar is in a position to establish his claim, and that he was no benamidar, he should be non-suited as against the purchaser, but should be allowed to sue his representatives, is a position which I cannot understand. Section 314 was the subject-matter of interpretation by the various High Courts and they differ in their views. They intervened and said 'we ought to protect the interests of the court auction purchaser.' If you are prepared to protect him, the *bona fide* purchasers who acquire title from him should also be protected. It only stands to reason and I do not think we should go back to Section 314 and say that these persons should be allowed to be sued against.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know from Mr. Subba Aiyar whether it is not possible for a person to purchase from a certified auction purchaser for the sake of the receipt only and should he be protected against the real owner?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The present suit may not probably be concerned with it. In that case a separate suit may lie. The title of the original purchaser is all that is sought to be protected against. The original sale is valid and we are not concerned with any other transaction.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, Section 314 of the Civil Procedure Code has not been found to work unsatisfactorily by the courts in Travancore. Mr. Subba Aiyar cannot find out any particular hardship caused to any litigant by the existence of that Section. The present proposal is to oust the jurisdiction of the civil courts by extending the operation of that section. Any provision of law which attempts to oust the jurisdiction of civil courts is not acceptable from my standpoint. Hence I press the motion.

The amendment was put to the vote of the House and declared lost.

DEPUTY PRESIDENT: The question is that Clause 59 form part of the Bill.

Clause 59 was added to the Bill.

Clauses 60 to 65.

DEPUTY PRESIDENT: There are no amendments to Clauses 60 to 65. The question is that Clauses 60 to 65 form part of the Bill.

Clauses 60 to 65 were added to the Bill.

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Clause 66.

The following amendments were not moved, the member not being present at the time and they were deemed to have been withdrawn.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*):

Line 4. Substitute "one" for "three."

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*):

Add the following proviso: "But nothing in this Section shall relate to suits the object of which will be defeated by the delay consequent upon the compliance with the provisions of this Section."

DEPUTY PRESIDENT: The question is that Clause 66 form part of the Bill.

The motion was carried and Clause 66 was added to the Bill.

Clauses 67 to 94.

DEPUTY PRESIDENT: There are no amendments to Clauses 67 to 94.

The question is that Clauses 67 to 94 form part of the Bill.

The motion was carried and Clauses 67 to 94 were added to the Bill.

Clause 95.

The following amendment was not moved:

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*):

Add the following at the end of the Clause: "and the rules so passed shall be subject to the sanction of Our Government."

DEPUTY PRRSIDENT: The question is that Clause 95 form part of the Bill.

The motion was carried and Clause 95 was added to the Bill.

Clause 96.

The following amendment was not moved:

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*):

Sub-clause (1). Delete.

DEPUTY PRESIDENT: The question is that Clause 96 form part of the Bill.

The motion was carried and Clause 96 was added to the Bill.

Clauses 97 to 120.

DEPUTY PRESIDENT: There are no amendments to Clauses 97 to 119. The question is that these Clauses form part of the Bill. Clause 120 has being deleted by the select Committee.

The motion was carried and Clauses 97 to 119 were added to the Bill.

Clause 121.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to move—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I think we will have to take it after the last amendment. If that amendment is carried, then only there is any necessity for this.

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[Mr. P. K. Narayana Pillai.]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I may explain it myself. I have introduced the expression 'rules' with the main object of effectuating another amendment that I have sent in. My object is to amend the schedule containing the repealing provisions of the Civil Procedure Code. Therefore, I have included 'Civil Courts' Guide' in order to repeal the Civil Courts' Guide as has been now enacted by the High Court so far as it bears upon the Civil Procedure Code. My friend speaks only of statutes. I would include rules also. The consideration of both amendments is necessary and both may be taken up together.

DEPUTY PRESIDENT: The amendment of Mr. Narayana Pillai is deferred for consideration. We will now proceed to Order I.

Orders I to XX.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I move to add the following to Rule 8 as sub-clause (3). "*In suits instituted under the provisions of this rule, the costs, if any, shall, in the absence of any direction to the contrary, be paid by or to the party on the record.*"

Rule 8 of that order is in the place of the present Section 26 of the Civil Procedure Code. That is what is known as representative actions, where one party sues or defends in an action common to himself and a number of other persons, all of them cannot be brought together, being too numerous. In such cases, recently the question has been raised as to who is the party to pay the cost, take for instance, a party on the record suing on behalf of a village. He may be a self-constituted agent or representative of the whole village. Are the villagers to pay the costs or is the party on the record to pay the costs? That question has been recently agitated in Civil Courts and the law, as has been settled under the corresponding sections of the procedure law practised in England, is to the effect that only the party on the record should be responsible for the costs. In support of what I am submitting, I may refer to the decision of Lord Fletcher Moulton in Mark & Co., Ltd., V Knight Steam Shipping Co., Ltd., (1910) 2 K. B. P. 1021.

DEPUTY PRESIDENT: You want to add 'in the absence of any direction to the contrary.' Do you mean in the decree?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes. Recently, the question was raised before the Bombay High Court also, and Justice Marten in 42 Bombay 566 found himself in considerable difficulty over this question and he observes that, in such representative actions, the court drawing up the decree must direct from which particular party the costs must come—whether it is from the representative on the record or the party represented by the party on the record, being in that case some villagers. He particularly points out the necessity of the court paying attention to such a matter. Now, the general principle of law being that only the party on the record should be held responsible, I say that, except when there is a direction to the contrary from the court, it is only the party on the record that will be liable for

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the costs of such an action. That is the object with which I have introduced this amendment, and I think that, in the nature of such actions when there is absolutely nothing like a guiding principle available, the matter requires attention at the hands of the legislature.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I do not think that it is necessary. Clause 32 of the Bill says:—

"Subject to such conditions and limitation as may be prescribed and to the provision of any law for the time being in force, the costs of, and incident to, all suits shall be in the discretion of the court, and the court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purpose aforesaid."

I think that it is a very wide power and it does not restrict it to the party on record. In the case of representative suits, the court will be justified in using its discretion and I think that the powers under Clause 32 are more ample and much wider than under the amendment. I do not think we need go in for expenses, because even there it may be open to the court to decree from what estate or what property or to what extent the costs should be paid. So, I do not think the amendment is necessary.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I need only remind my friend Mr. Subba Aiyar that in view of the corresponding order and rule of the Civil Procedure Code Justice Marten observes distinctly in a judgment of the Bombay High Court that in such a case the matter should be specifically provided for. Therefore, I am submitting, that, in spite of this provision, difficulties have been experienced, and unfortunately there have been conflicting rulings on this subject.

The amendment was put to the vote of the House and declared lost.

Orders I to XX were added to the Bill.

Order XXI.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): I have got an amendment to move in Order XXI.

DEPUTY PRESIDENT: It is not in the printed list, but I shall allow you to move it.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): That amendment has been typed and circulated among us. I beg permission to move an amendment to Order XXI, Rule 86, which relates to application to set aside sale on deposit. I move that the following proviso be added to sub-rule (1):

"Provided also that when several items of properties are sold separately, the sale of one or more of such items may be set aside on depositing in court the amount of the purchase money for the items, the sale of which is sought to be set aside, and a sum equal to 5 per cent. of that amount."

Rule 86, Sir, provides for setting aside the sale in execution of a decree on deposit. That is to say, the decree debtor or any person whose immovable property has been sold in auction is entitled to have the sale set aside on his depositing in court the whole of the amount mentioned in the Proclamation, along with the usual commission of 5 per cent.

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[Mr. C. P. Kochukunju Pillai.]

The object of my amendment is this. The Section is all right if the properties or several items of properties are sold in one lot. But if properties or several items of properties are sold separately, that is in two or more lots, the Section does not provide for setting aside the sale of one or more of such items.

The object of my amendment is to allow such relief as well. Suppose a *Jenmi* sues for the recovery of arrears of rent etc., due on a Kanom document which covers several items of property some of which may be outstanding on mortgage, while others have been purchased by others on the date of the suit; the *Jenmi* while he sues makes such mortgagees and also subsequent purchasers as parties and obtains a decree. The properties are sold separately, *i. e.*, in two or more lots. If any of the defendants, say, the mortgagee or the subsequent purchaser or the decree debtor himself wants to set aside the sale in respect of one or more items of properties sold, he is not allowed under this Rule to do so. On the other hand, considerable difficulty is experienced by the decree debtors and other persons to whom the property belongs on account of this rule. Sir, I am aware of the great difficulties experienced by people. Suppose 10 items of property are sold for the decree debt due by a particular defendant. He is unable to raise the whole of the money mentioned in the Proclamation and deposit it in court so that he may be in a position to set aside the sale of one lot of the property sold. Of course, he may lose the other lots of property. At least one lot he may be able to save which he will not be able to do now. Apart from these difficulties, the High Court is inclined to support my position. There is a ruling in 10 T. L. R. page 31, which allows the relief that I plead for in my amendment. That was a case to set aside the sale of one of the several properties that were sold in auction. The learned Judge in reversing the order on appeal said that where properties had been sold in separate lots, an application to set aside the sale on depositing the amount of purchase money of such lots would lie. That was the decision of the District Judge which was confirmed by the High Court who observed that, in consideration of the facts of the case, they were inclined to the conclusion of the District Judge rather than to that of the Munsiff. This ruling has also been followed in 12 T. L. J. page 34 and 13 T. L. J. page 307. In 13 T. L. J. what is said is this "In Madhavan Pillai v. Sastavu (10 T. L. J. 31) this court in a case on all fours with the present held that when, in execution of one decree, property was sold in two or more lots, judgment debtor or other person whose property had been sold could apply to have the sale set aside as regards one or more lots without having the sale set aside as a whole."

MR. C. SANKARA MENON (*Quilon*): May I know whether the purchaser was a stranger or a decree holder?

MR C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): Decree holder.

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MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I know whether in those cases the whole of the decree amount was realised or not?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): No, not the whole. In some cases, some money remained to be realised and that was deposited.

DEPUTY PRESIDENT: Is there any conflict of rulings which has to be removed by the legislature?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): So far as I know, I know only these three rulings and I think there are no other rulings of the High Court on the subject.

With regard to the suggestion made by Mr. K. Paramesvaran Pillai, I agree with him in thinking that some addition of words may also be made.

DEPUTY PRESIDENT: You do not make any distinction between a decree holder, auction purchaser and a stranger auction purchaser, I suppose?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): It does not make any difference whatsoever. The principle to set aside the auction is accepted by the High Court. That is all I want to impress upon this Council.

DEPUTY PRESIDENT: Do you want to make some addition to the amendment, Mr. Kochukunju Pillai? Then your amendment will run thus:—

"Provided also that when several items of properties are sold separately, the sale of one or more of several items may be set aside on depositing in court the amount of purchase money for the items the sale of which is sought to be set aside and a sum equal to 5 per cent. of the amount."

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): The decree amount strictly means an amount in the decree. The amount mentioned in the proclamation will be quite different. That may be more than the decree amount. So I beg permission to add at the end "as well as the balance, if any, still remaining unpaid of the decree debt."

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I make a suggestion with respect to the wording?

DEPUTY PRESIDENT: Oh, yes.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*):

"and the balance, if any, of the amount specified in the proclamation of sale, as that for the recovery of which the sale was ordered still remaining unrealised"

I would add it at the end of the amendment of Mr. Kochukunju Pillai.

KHAN SAHIB M. K. KHADIR PILLAI (*Nominated*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I do not see the necessity for such a provision because, as Mr. C. P. Kochukunju Pillai pointed out, the High Court has been consistently ruling all along that, in the case of a decree holder, it is open to the judgment

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[Mr. Joseph Panjikaran.]

debtor to deposit the amount due after giving credit to the amount that has been realised by the auction sale. When a decree holder purchases property in auction, they say it must be taken that, as soon as each auction sale is knocked down, the decree debt is reduced to that extent; on the basis of that principle they say that it is open to the judgment debtor to deposit the amount of any item of property that he may seek to set aside., *i e.*, if five items of properties are sold, the amount of the first three items will be reduced or the amount for the last two items may be reduced and the amount that he purchased for should be taken to have been paid towards the decree amount and therefore the decree amount is reduced to that extent. It may or may not be that the amount is realised only the last day. That being the case, it may not be possible to apply it.

We all know that, when an auction comes to an end, a Judge insists that the whole of the amount should be realised and so it is sold at a higher amount. So that, it is left to the judgment debtor to pick and choose what particular item he should choose and what particular amount he should reject. So in the case of the decree holder, the rulings of the High Court have been consistent. The existing section has been consistent and there has been no conflict of rulings. If Rule 86 (1), Order 21 is to be amended, it can be done at any time as the Vakils practising in the High Court are to be members of the Rule Committee and it is open to them to revise it in any way they like. Therefore, instead of putting in a Rule which is unworkable, and which is not necessary, I think it may be left to the Rule Committee to amend it, if necessary.

MR. JOSEPH PANJIKARAN (*Shertallai*): Sir, I support the amendment. The thing that is sought to be remedied is this. Mr. Subba Aiyar has been showing that the decisions of our High Court have been consistent on this point. I know of instances even after 10 and 12 T. L. J. that have been referred to, in which this principle has not been granted. I know of an appeal in the Alleppey District Court with a view to set aside--

DEPUTY PRESIDENT: The third party was the auction purchaser?

MR. JOSEPH PANJIKARAN (*Shertallai*): No, a decree holder was the purchaser. The High Court held that setting aside of one item of property cannot be allowed on the ground that the confirmation of auction of the items of property was not made. Unfortunately that ruling has not been reported. There was also another ruling which was also not reported.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): We will be guided by the reported rulings.

MR. JOSEPH PANJIKARAN (*Shertallai*): Then the other reason on which my learned friend Mr. Subba Aiyar opposed the amendment is that the ordinary experience of the lawyers is to the effect that, generally when an execution sale will be closing, the Courts

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may say there is something more of the decree amount, that there are only two or three items of property remaining. So there is a chance of a larger amount of money having been invested on one of the items of property which may not be very valuable. My submission is that a decree holder will be careful when he makes a purchase. Till now excepting those two rulings, the decree holder had not the right to set aside the auction sale with respect to one item of property.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Is it legal for the Judge to give such an advice to the bidder ?

MR. JOSEPH PANJIKARAN (*Shertallai*): I do not know whether there is anything illegal there. There may be some debt remaining. The decree holder may arrest the debtor under a warrant. But the Court sometimes says, "you may do like that". I think it is not a violation but it is only an advice which the decree holder is welcome to accept or not. So, what I say is the decree holder will be careful to make such a purchase. The enactment of this provision will, I think, be a very wholesome one. I know of instances of all the properties belonging to a debtor being sold away even so far as the debtor's homestead is concerned. People who have no money may be willing to deposit money to set aside the auction sale. So, unless there is such a provision, we cannot be sure that it will be a thing to which the decree debtor will be entitled. Nobody is going to lose by such a provision. It is highly necessary that a provision of this kind should be introduced in the Civil Procedure Code. Hence, I support the amendment.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): Sir, I am not satisfied with the two explanations given by Mr. Subba Aiyar. His first explanation was that the High Court, in the ruling I quoted, allowed the setting aside of a part of the sale on the ground that the purchaser happened to be the decree holder. That is not so. The section as it exists does not allow the setting aside of a sale. So the High Court had to construe the section as it is. The Section, as it originally stood, runs thus :

86. (1) Where immovable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before or after such sale, may apply to have the sale set aside on his depositing in court,—

(a) for payment to the purchaser, a sum equal to five per cent. of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder."

Their Honours interpreted this portion of the section and came to the conclusion that the decree holder has purchased and the money was realised accordingly and it was presumed to be the money realised by the decree holder himself. The High Court had no other go but to construe the section as it is. My submission is that the setting aside of a part sale is accepted. The section does not at all contemplate the setting aside of more than one item when all the items are sold in lots. But the High Court, seeing that it will be only fair, construed sub-clause (b) of that section in favour of the judgment debtor who applied to have

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[Mr. P. K. Narayana Pillai.]

the judgment sale set aside. That is all that the High Court has done. A reading of the judgments passed by the High Court will show that the High Court has accepted the setting aside of a part sale as contemplated by the amendment.

The second objection of Mr. Subba Aiyar is that one purchaser might have bid the property for a higher price than the price of the property itself or for a lower price than the value of the property. That is an argument which, I think, cannot be accepted. The decree holder himself fixes the price of the property or the *amin* who goes to the site fixes the value of the property and the amount for which the property has been sold as specified in the report has to be taken to be the correct value of the property. I press the amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I do not think it is necessary for me to add anything more. Mr. Kochukunju Pillai said that, in construing the Section, the High Court said that the amount should be credited towards the decree amount less any amount from the date of the proclamation, which may, since the date of such proclamation of sale, have been received by the decree holder. He therefore, says that it will only apply to a decree-holder and not to any other person and that the amount can be received only after the sale is confirmed. I say we have no conflict of reported rulings and I am not aware that there is any conflict in the case of the unreported rulings. Therefore I do not see any necessity for the amendment.

The amendment as amended was put to the vote and carried 20 voting *for*, and 15 *against*.

The question that Order XXI as amended do form part of the Bill was then put and carried.

The Order was added to the Bill.

Orders XXII to XLIV

The question that Orders XXII to XLIV do form part of the Bill was then put and carried.

The Orders were added to the Bill.

Order XLIV.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): My amendment is that, at the end of sub-clause (1) (*c*) Rule 7, the following be added:

Or by way of revision by the High Court where the suit is triable as a small cause suit.

The rule as it stands at present reads as follows:

(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was—

(*a*) in contravention of the provisions of rule 2,

(*b*) in contravention of the provisions of rule 4, or

(*c*) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

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Now an appeal is provided under this rule from an order granting review when it is against certain specific sections of the Civil Procedure Code; and two stages are allowed for preferring such appeal—the first stage being when the review is itself granted and the second stage when the decree is appealed from. Now there are certain cases in which no appeal is allowed, for example, in the case of small cause suits. In such cases, my submission is that an alternate method of attack may be provided, enabling one to take the objection at the time of the revision by the High Court. It is only for that purpose that I add this amendment.

DEPUTY PRESIDENT: Without this addition, can you not do so?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is not possible.

DEPUTY PRESIDENT: I mean, where a review is granted, have you not got that power now? I do not speak of the order granted under this rule. You only want to reserve the right of revision in a small cause suit. Where a review is granted, have you not got that at present?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The grant of review cannot be questioned by way of appeal or revision after decree. The stage at which the appeal may be tried has been specified and if a party does not take advantage of it, the High Court will decline to interfere at the final stages of revision with the order granting the appeal. There are cases where no appeal is allowed and it is absolutely necessary, if the party is not advised to prefer an appeal at once, to have some power. If he thinks he has got a strong case, he may not prefer an appeal. Hence, I would add these words after sub-clause (1):

Or by way of revision by the High Court where the suit is triable as a small cause suit.

MR. M. N. PILLAI (*Trivandrum*): I second the amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, in the case of small cause suits, nothing is said in the section. What the section says is that you may take the objection immediately or at the end when the decree itself is passed. In the case of small cause suits, if the thing is admitted and if the court makes that admission, I think without this provision the suit may be revised.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There is a ruling *per contra*.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think there is any ruling.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There is a ruling passed a week ago.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Then you may put in the amendment. I have no objection to it.

The amendment was carried.

The rule, as amended, was added to Order XLV.

Order XLV, as amended, was added to the Bill.

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[Mr. V. Subba Aiyar.]

Orders XLVI & XLVII.

The question that Orders XLVI and XLVII stand as part of the Bill was then put and carried.

The Orders were added to the Bill.

The First Schedule.

The question that The First Schedule as amended do form part of the Bill was then put and carried.

The First Schedule was added to the Bill.

DEPUTY PRESIDENT: The Second Schedule has been deleted by the Select Committee.

The Third Schedule.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There was a prior amendment suggested with respect to Clause 121 which was deferred for consideration. Both of them may be considered together. This is my amendment, which may be added at the end of the schedule as the 6th item.

"*Column 3 Civil Courts' Guide. Column 4, so much of the rules as bear on Regulations II of 1065 and V of 1085.*"

Various things are repealed under this Regulation and Schedule III enumerates the things that are repealed. Five items are entered as enactments repealed. I propose to enter this as the 6th item. The Civil Courts' Guide is attempted to be repealed so far as it relates to the Civil Procedure Code. On two occasions this Council expressed its opinion that the operation of the Civil Courts' Guide should be suspended and got rid of on certain grounds. Now that the Civil Procedure Code is amended, my submission is that the Civil Courts' Guide and the references to the existing Civil Procedure Code will appear a little out of tune with the present enactment.

DEPUTY PRESIDENT: To that extent they stand repealed; that is implied.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There is a Rule Committee. There are other matters also provided for under this Regulation. There has been an amount of dissatisfaction expressed against the Civil Courts' Guide. In view of these matters I thought that the Civil Courts' Guide may also be included under the enactments repealed.

DEPUTY PRESIDENT: If you put it in that form, the Council may not be in a position to consider the various rules in the Civil Courts' Guide which are useful. Don't you think it will be better if the consideration of it is left to the Rule Committee?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If Mr. Subba Aiyar gives such an undertaking, I will withdraw this amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Probably Mr. Narayana Pillai can give such an undertaking. I do not think I can give it.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): On behalf of Government he can give.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): He wants that no rule of the Civil Courts' Guide should be revived. Unfortunately, by repealing the Regulation, the thing that has been repealed does not get revived.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The High Court is at liberty to repeal the whole of the Civil Courts' Guide.

DEPUTY PRESIDENT: I am putting as a matter of principle that there may be rules which are absolutely necessary and quite unobjectionable; there may be others which may be contrary to the express provisions we are enacting. So far as that is concerned, the implication is that the rules stand repealed. There may be still others which may have to be modified. This Council, without going into the merits of the different rules which have to be affirmed, repealed or modified, cannot at a stretch repeal the whole of the Civil Courts' Guide by an amendment to Schedule III of the Civil Procedure Code. A more satisfactory course will be to suggest that the Rule Committee might begin to revise the Civil Courts' Guide at an early date before the Civil Procedure Code becomes law.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The Rule Committee can be brought into existence only by Government.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): They are bound under the Statute.

MR. P. K. NARAYANA PILLAI (*Amablapuzha*): If therefore the Government would now agree that the matter would be looked into in the near future, it is all right.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The Rule Committee is composed of 3 or 4 non-officials. So even without the Government agreeing to that, they are bound to do it under the statute. It is not a question of Government's assurance. There is no objection in saying that the thing may be looked into.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If you say so, that is enough.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The Rule Committee has to consider the rules in the Civil Courts' Guide. Their legitimate scope of work is with respect to the rules enacted under the Code.

DEPUTY PRESIDENT: It is incidental to their work.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The Rule Committee therefore has to consider something extra.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I may say that for the last so many days we were looking into the various objections and I may assure my friend that every objection which arises hereafter will be considered by the Government.

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[Mr. V. Subba Aiyar.]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is my friend communicating to me the information unofficially?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If my friend agrees, I have absolutely no objection.

DEPUTY PRESIDENT: Mr. Narayana Pillai, then you withdraw your amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I withdraw my amendment in view of the assurance made by the Law Member that the matter would be looked into in the near future.

The amendment was by leave withdrawn and the Third Schedule was added to the Bill.

Clause 121.

DEPUTY PRESIDENT: Let us go back to Clause 121.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In the light of the assurance given above, this amendment becomes unnecessary; so I do not move it.

The following amendment was accordingly not moved.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*):

"Line 1 After Enactments' insert "rules."

The question that Clause 121 form part of the Bill was put to the vote and carried, and the Clause was added to the Bill.

Order 20.

MR N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Sir, in Order 20, rule (2) an amendment should have been moved. In the case of District Judges alone provision is made for judgments not being in the handwriting of the Judges.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): What about the High Court? Nothing is said about that.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Such a thing is applicable in the case of Munsiff's Court. It is now rather too late to consider that.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I have not given notice of my amendment.

DEPUTY PRESIDENT: Well, I do not propose to trouble the Council with the difficulties arising out of that.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I beg to move that the Civil Procedure Code Amendment Bill be taken up for final reading and passed subject to the amendments now proposed. I think that all these Bills, we have been troubling ourselves about for the last so many days should be passed by the very Council that sat over them, because the work has been ours and the credit may not go to somebody else. We have been worrying ourselves with these Bills for so many days especially in the Select Committee and my friend Mr. P. K. Narayana Pillai and others know that pretty well. When

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such is the case, I do not see why we should not have the credit of having it passed by this Council. I therefore move that the Civil Procedure Code Amendment Bill be finally passed with the addition that it shall come into force on the 1st Chingam 1101 M. E., the operation of the Standing Orders being suspended.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): I second the motion.

DEPUTY PRESIDENT: The question is that the Civil Procedure Code as settled by the Council be finally passed with this addition that it shall come into force on the 1st Chingam 1101 M. E. I take it that the Council accepts it.

The motion was carried.

THE LIMITATION REGULATION AMENDMENT BILL.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to move that the Limitation Regulation as settled by the Council be finally passed and that it shall come into force on the 1st Chingam 1101 M. E., the operation of the Standing Orders being suspended.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): I second it.

DEPUTY PRESIDENT: I take it that the Council accepts it.

The motion was carried.

THE VILLAGE PANCHAYAT BILL.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to move that the Village Panchayat Bill as settled by the Council be finally passed and that it shall come into force on the 1st Chingam 1101 M. E.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): I second it.

DEPUTY PRESIDENT: I take it that the Council accepts it.

The motion was carried.

THE INCOME TAX REGULATION AMENDMENT BILL.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to move that the Income Tax Regulation Amendment Bill as settled by the Council be finally passed and that it shall come into force on the 1st Chingam 1101 M. E.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): I second it.

The following motion, *viz.*, "This Regulation shall come into force on the 1st day of Chingam 1101" be added as Clause 38, was carried.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, with reference to the observations of Mr. T. K. Velu Pillai, I have to say a word. We have passed all the Bills that I have been in charge of and though in regard to the Civil Procedure Code Amendment Bill there arose a certain amount of adverse criticism from the non-official members, I am

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